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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Be the Patent of

Morio MATSUMOTO et al.

Group Art Unit: 2851

Patent No.: 7,637,619

Examiner: W. DOWLING

Patented: December 29, 2009

Docket No.: 126942

For: LIGHT SOURCE DRIVING METHOD AND PROJECTOR

PETITION UNDER 37 C.F.R. § 1.182 and/or § 1.183

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I. STATEMENT OF FACTS

- The Patent Office issued Petitioners' above-identified patent on December 29, 2009.
- The Patent Office erroneously calculated Petitioners' Patent Term Adjustment (PTA) based on a "pre-*Wyeth*" interpretation of 154(b)(2)(A) by failing to account for "B" type delay.
- Petitioners understood that the PTA attributed to Petitioners' patent was erroneous no later than June 1, 2010
- Due to unintentional error caused by miscalculation of the time period set by the Commissioner during which to seek review by the Patent Office of the PTA, Petitioner did not file the Request for Recalculation of Patent Term Adjustment in View of *Wyeth* until two days after the end of the 180-day

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period (the 180 day period ended on June 28, 2010 because June 27 was a Sunday).

- Upon learning of the error late in the day on June 29, Petitioner diligently prepared and filed the Request, concurrently with this Petition, on June 30.

II. ARGUMENTS

Rule 183 provides:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Director or the Director's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed.

Petitioners respectfully submit that Petitioners' unintentional error would result in manifest injustice were the Commissioner-imposed 180-day time limit strictly applied in this case. Specifically, Petitioners believe that the PTO error in calculating Petitioners' PTA resulted in a loss of patent term of 312 days.

In view of the potential loss of nearly a year in patent term, caused by PTO miscalculation and then Petitioners' miscalculation, Petitioners submit that this situation is an extraordinary circumstance. Because the 180-day period is not a requirement of statute, and is instead a policy imposed by the Commissioner, Petitioners submit that the 180-day time limit may be waived, and should be waived as justice requires. Although 35 U.S.C. §154(b)(4) sets a 180 day period in which to file a District Court action, it does not set any period in which to seek PTO review.

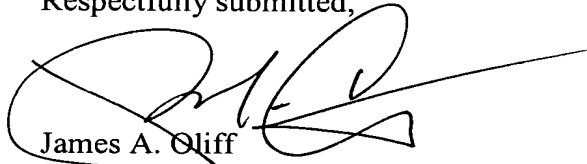
Furthermore, to be fair to all patentees, the PTO should start the 180 day period from the January 7, 2010 date of the *Wyeth* decision, in which case Petitioners' attached Request is timely.

Furthermore, as the calculated PTA is a PTO error, the PTO should issue a Certificate of Correction to correct the PTO error, changing the PTA of this patent from 652 days to 964 days.

Petitioners are conducting additional research on this issue and may supplement this Petition in the near future.

A petition fee pursuant to § 1.17(f) is filed herewith (check no. 230304 for \$400). Should the Commissioner believe that anything further would be desirable in order to grant this Petition, the Commissioner is invited to contact the undersigned at the telephone number set forth below. Furthermore, the Commissioner is hereby authorized to charge Deposit Account No. 15-0461 for any further fees deemed necessary to grant this Petition.

Respectfully submitted,


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JAO:RAC/mcp

Date: June 30, 2010

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<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry of this filing; Charge any fee due to our Deposit Account No. 15-0461</p>
